

# **Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law**

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# 1 Civic space developments in 2021

<b>1.1 Bill on non-profit associations and foundations discussed in parliament</b>	
Area	Freedom of association
Topic	Formation and registration of associations
Impact	Major

The only legislation which regulates non-profit associations and foundations is the 1928 Act.<sup>1</sup> However, the Government of Luxembourg introduced in 2009 a bill proposing a new text and abrogating the 1928 Act (Bill No. 6054 (2009)<sup>2</sup>). Nevertheless, during the last 12 years, this bill did not move in parliament until 2021, when the Government presented amendments<sup>3</sup> to it, and other stakeholders gave their legal opinions.<sup>4</sup> The amendments<sup>5</sup> (1) simplify the authorisation procedures by rendering them transparent; (2) set the initial endowment of foundations at 100,000 euros, with the possibility of consuming the assets without the net assets falling below 50,000 euros. This amendment allows the reduction of the endowment from 250,000 euros initially proposed rendering the instrument more flexible; (3) more efficient governance by adapting the framework to the technological developments, which allow the introduction of a legal framework for the organisation of day-to-day management and allowing the board of directors or general assembly meetings to be held remotely; (4) introducing new restructuring tools for the transformation or mergers of associations/foundations; (5) define a tailor-made accounting regime, in line with international standards to guarantee transparency, comprising simplified accounting for small associations; Only large associations, associations of public utility and foundations are obliged to submit their accounting documents to an approved auditor; (6) include an administrative dissolution procedure.

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<sup>1</sup> [Loi du 21 avril 1928 sur les associations sans but lucratif et les établissements d'utilité publique](#)

<sup>2</sup> Bill No. 6054 on non-profit associations and foundations of 6 June 2009 (original in French: [Projet de Loi No. 6054 sur les associations sans but lucratif et les fondations](#) du 6 juin 2009)

<sup>3</sup> Text and comments of the government amendments ([Document No. 6054/08](#)) of 26 July 2021 (original in French : Texte et commentaire des amendements gouvernementaux ([Document No. 6054/08](#)) du 26 juillet 2021)

<sup>4</sup> Institute of Company Auditors (*l'Institut des Réviseurs d'Entreprises*) [Document 6054/09](#) (ii) Chamber of Employees (*Chambre des Salariés*) [Document 6054/10](#); and (iii) Chambre of Commerce (*Chambre de Commerce*) [Document 6054/11](#)

<sup>5</sup> Government of the Grand Duchy of Luxembourg. Ministry of Justice. 'Sam Tanson presented the new legal framework for associations and foundations' (*original in French: [Sam Tanson a présenté le nouveau cadre légal pour les associations et fondations](#)*), statement, 13 July 2021

The Chamber of Employees would like the law to include fiscal incentives to promote volunteering amongst employees and define a leave of absence to volunteer in non-profit associations.<sup>6</sup> The Chamber of Commerce wants to ensure that the definition of non-profit association forbids associations to carry out commercial activities, such as having refreshment bars/stands or cafes, to generate a profit for the association, which is akin to unfair competition with commercial bars or restaurants.<sup>7</sup>

<b>1.2 Bertelsmann – Government contract is made public after a legal battle: a step towards reducing media concentration</b>	
Area	Freedom of expression and information
Topic	Other, please specify: Media concentration
Impact	Major

Media concentration is an issue in Luxembourg, with the RTL Group, part of the German media giant Bertelsmann, dominating the audio-visual sector<sup>8</sup>. A Member of Parliament took the Government to court in 2020 for refusing to make the Bertelsmann, RTL and the government contract-related documents accessible to parliament, winning the legal battle. The court's rationale<sup>9</sup> for rendering the contract public is that the refusal is illegal, taking into consideration the eminent status of a Member of Parliament as conferred by the Constitution in a parliamentary democracy subject to the fundamental principle of the rule of law allowing the Parliament's control of the executive functions to avoid abuses by the executive branch.<sup>10</sup> The impact of media concentration in Luxembourg, derived from the size of the country - and the subsequent small size of the advertising market - makes journalists and media more vulnerable to influence from companies or governments.

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<sup>6</sup> Chamber of Employees (*Chambre des Salariés*) [Document 6054/10](#)

<sup>7</sup> Chambre of Commerce (*Chambre de Commerce*) [Document 6054/11](#)

<sup>8</sup> KIES, Raphaël, & HAMDI, Mohamed (2021) Monitoring media pluralism in the digital era: application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, The Republic of North Macedonia, Serbia & Turkey in the year 2020: country report: Luxembourg, Centre for Media Pluralism and Media Freedom (CMPF), 2021, Country Reports p. 12. Retrieved from Cadmus, European University Institute Research Repository, at: <https://hdl.handle.net/1814/71954>

<sup>9</sup> Administrative Court judgement [no. 44997C](#) of 26 January 2021.

<sup>10</sup> Grand Duchy of Luxembourg Justice Portal. Statement of the Administrative Court regarding the communication of contracts concluded in 2017 between the RTL Group and a Member of Parliament, 27 January 2021 (original in French: [Communiqué de la Cour Administrative concernant la communication de contrats conclus en 2017 entre l'Etat et RTL Group a un député](#))

This court decision is a step in the positive direction towards overcoming Luxembourg's current situation. The judgment recognised that the dominant position of the RTL group and confidentiality clauses in the contract with the State do not exempt the media group from Parliamentary control. It also tries to correct the absence of a national merger control law or a similar provision to limit media concentration and the lack of an administrative authority or judicial body effectively addressing issues relating to media concentration.<sup>11</sup>

<b>1.3 Hate speech targeting migrant rights' organisation</b>	
Area	Safe space & protection
Topic	Verbal attacks and harassment (online or offline; by private parties or public entities)
Impact	Minor

The Association for the Support of Immigrant Workers (*L'Association de Soutien aux Travailleurs Immigrés*<sup>12</sup> ASTI)' president Laura Zuccoli has been a victim of online hate speech.

On 13 February 2021, Fred Keup, who is a Member of Parliament, published a post on his personal Facebook page, criticising Ms Zuccoli's opinion in the programme "Carte Blanche" on RTL Radio in which she talked of discrimination that Cape Verdean students suffered when transitioning to secondary schooling in Luxembourg<sup>13</sup>. Some of the comments to his post incited insults, violence, and death threats against Ms Zuccoli<sup>14</sup>. This event is noteworthy for several reasons: a) it is not an isolated event of xenophobic hate speech. In 2015, for instance, the Luxembourg Criminal Court convicted the two perpetrators of death threats and xenophobic hate speech targeting former ASTI president Serge Kollwelter and current president Laura Zuccoli, to 9-months in prison<sup>15</sup> b) Latent xenophobia in Luxembourg shows through the spread of anti-immigrant and xenophobic hate

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<sup>11</sup> KIES, Raphaël, & HAMDI, Mohamed (2021) Monitoring media pluralism in the digital era: application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, The Republic of North Macedonia, Serbia & Turkey in the year 2020: country report: Luxembourg, Centre for Media Pluralism and Media Freedom (CMPF), 2021, Country Reports. Retrieved from Cadmus, European University Institute Research Repository, at: <https://hdl.handle.net/1814/71954>

<sup>12</sup> For more information, see [ASTI website](#).

<sup>13</sup> RTL. Discrimination is poison to our social cohesion (original in Luxembourgish: [Diskriminéierung ass Gëft fir eise sozialen Zesummenhalt!](#), 12 February 2021

<sup>14</sup> ASTI webpage. Halt hate speech in Luxembourgish politics (original in French : [Halte au discours de haine dans la politique luxembourgeoise !](#) in *L'Association de Soutien aux Travailleurs Immigrés*), 26 March 2021.

<sup>15</sup> L'Essentiel. Convicted of hate speech on Facebook. (original in French: [Condamnés pour propos haineux sur Facebook](#)), 22 January 2015. See also, Luxembourg Wort. [9 months in prison for death threats on Facebook](#), 22 January 2015.

speech;<sup>16</sup> c) hate speech has become part of the political debate in Luxembourg. In this case, MP Fred Keup Facebook page was the venue. Also, some of the Green Party (original in Luxembourgish: Déi Gréng) members were attacked on social media with insults, incitation to violence and death threats. In response to these attacks, on 16 November 2021, the Déi Gréng party released a video on social media where individual party members read out abusive tweets they had received.<sup>17</sup>

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<sup>16</sup> European Commission against Racism and Intolerance (ECRI) Report on Luxembourg, 28 February 2017 [CRI\(2017\)4](#)

<sup>17</sup> RTL Today. "[Déi Gréng](#)" politicians attacked on social media', 17 November 2021.

## 2 Examples of civil society contributions to the rule of law

<b>2.1 An NGO under scrutiny for being critical of the Government asylum procedures</b>	
Topic	<ul style="list-style-type: none"><li>• Assisting victims in accessing judicial and non-judicial mechanisms of justice</li><li>• Monitoring the legality and proportionality of laws, measures and practices; triggering the judicial review of laws, measures and practices and the enforcement of rulings; strategic litigation</li></ul>

The non-governmental and legal aid organisation '*Passarell*', a member of the European Council on Refugees and Exiles, has been working since 2016 on defence and application of the rights of applicants for international protection, beneficiaries of international protection and rejected applicants for international protection asylums seekers. This year the organisation has provided legal assistance to approximately 1,400 claimants.<sup>18</sup>

*Passarell* is publicly critical of the Government's asylum procedures. On 25 November 2020, the organisation filed a lawsuit before the first instance administrative court to halt the Directorate of Immigration's practice discouraging potential claimants from requesting international protection by forewarning that their claim is unlikely to be accepted.<sup>19</sup> The hearing will take place in May 2022.<sup>20</sup>

In 2021, the organisation was publicly critical of the Government's response to international protection claims from Afghan nationals. In 2021, Member of Parliament Fernand Kartheiser addressed a parliamentary question to the Minister for Foreign and European Affairs and to the Minister of Finance on whether or not *Passarell* receives government funding.<sup>21</sup> In its parliamentary question Mr. Kartheiser indicates that recently the NGO has been critical to the government policy regarding applicants for international protection which obliged the Ministry of Foreign and European Affairs to defend his services and stated that this NGO is

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<sup>18</sup> Information provided by Passarell on 6 January 2022.

<sup>19</sup> Paserell, Rapport annuel Luxembourg 2020, Luxembourg, p. 20. See the full text of the lawsuit at: [https://7fbd6c04-47c2-4b9a-859a-d3933d784078.filesusr.com/ugd/837f1b\\_aae95c32ff6e4fa89c8992dc96107282.pdf](https://7fbd6c04-47c2-4b9a-859a-d3933d784078.filesusr.com/ugd/837f1b_aae95c32ff6e4fa89c8992dc96107282.pdf)

<sup>20</sup> Information provided by Passarell on 6 January 2022.

<sup>21</sup> Parliamentary question [no. 4429](#) of 7 June 2021 by Member of Parliament Fernand Kartheiser.

making opposition at all costs.<sup>22</sup> From the Ministry of Foreign and European Affairs response, Passerell receives 5,000 Euro from the Ministry of Justice.<sup>23</sup>

<b>2.2 Anti-racism training for school staff in Luxembourg</b>	
Topic	Fostering a rule of law culture (including through advocacy towards public authorities, awareness-raising activities and civic education)

The Luxembourg Afrodescendant Network and anti-racism NGO 'Finkapé' has been raising awareness of anti-black racism in Luxembourg since its inception in 2019 and throughout 2021, including round table discussions, debates, film screenings and conferences. In addition, in partnership with the National Teacher Training Institute (Institut de Formation de l'Education Nationale), Finkapé will conduct workshops targeting education staff on [identifying and eliminating ethnic-racial prejudice and micro-aggressions in school and on creating an inclusive and anti-racism school library](#).

Awareness-raising anti-racism is timely in Luxembourg given the Parliament and the Ministry of Family, Integration and the Greater Region (*Ministre de la Famille, de l'Intégration et à la Grande Région*)<sup>24</sup> decision to commission a study on racism, opinions on immigration and perceptions of ethnic-racial discrimination in Luxembourg.<sup>25</sup>

The non-governmental organisation 'Centre for Intercultural Studies and Training' (*Centre d'étude et de formation interculturelles et sociales Asbl -CEFIS*) has finished the qualitative part of the study and the research institute 'Luxembourg Institute of Socio-Economic Research – LISER' has finished the quantitative part and at the moment they are working on finalising the study in collaboration with the Department of Integration.<sup>26</sup> Study results will be available in 2022.<sup>27</sup>

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<sup>22</sup> Ibidem.

<sup>23</sup> Ministry of Foreign and European Affairs [answer](#) to parliamentary question no. 4429 of 30 June 2021.

<sup>24</sup> Luxembourg, The Parliament of the Grand Duchy of Luxembourg, [Summary of the Plenary Session](#) N°21, 2019-2020-

<sup>25</sup> Luxembourg, Official page of the Gouvernement of the Grand Duchy of Luxembourg. [Launch of a national survey on racism and ethno-racial discrimination in Luxembourg](#), Press release 18 June 2021.

<sup>26</sup> Information provided by CEFIS on 7 January 2022.

<sup>27</sup> Luxembourg, note: Update needed, we are following any news, publications regarding this

The decision to commission the study was likely triggered by FRA's 2018 report [Being Black in the EU](#) findings which indicates that Luxembourg has a racism problem, especially related to discrimination.<sup>28</sup>

<b>2.3 Bee Secure Stopline against hate speech and sexual abuse</b>	
Topic	<ul style="list-style-type: none"> <li>• Supporting public authorities in countering discrimination, hate crime and hate speech</li> <li>• Combating disinformation and fostering media and digital literacy</li> </ul>

The NGO BEE Secure<sup>29</sup> has been active in 2021 on (1) combatting cyber-mobbing, cyber-harassment, cyber-bullying, grooming against children by delivering courses targeting parents, school staff, in partnership with the National Teacher Training Institute (Institut de Formation de l'Education Nationale) and publishing guidance material and (2) combatting online hate speech including online reporting of hate speech on the organisation's website [BEE SECURE Stopline](#) in collaboration with the police.

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<sup>28</sup> FRA, Second European Union Minorities and Discrimination Survey - Being Black in the EU. 2018, p. 37. It is important to mention that in this report FRA states in footnote 10 (page 37) that "In Luxembourg, it was not possible to access the available register for sampling, so FRA applied quota sampling. Results should therefore be interpreted with caution."

<sup>29</sup> Information available on the [BEE Secure website](#)

### 3 Other relevant developments

#### 3.1 UN CRC Committee & civil society critical of the committee responsible for best interest determination in cases of return of unaccompanied children

In 2021 the UN Convention on the Rights of the Child Committee raised concerns over the composition and lack of independence/neutrality of the advisory committee responsible for best interest determination in cases of return of unaccompanied children<sup>30</sup>. The committee has four members: (1) a representative of the ministry responsible for immigration and asylum (which is the Ministry for Foreign and European Affairs), who also acts as president; (2) a representative of the National Reception Office (*Office National de l'Accueil*) which falls under the minister responsible for asylum, (3) a representative of the National Office for Children (l'Office National de l'Enfance) which is part of the Ministry of Education, Children and Youth, and (4) a magistrate from either the judicial district of Luxembourg or Diekirch.<sup>31</sup>

Civil society is concerned about the absence of civil society members and the power of the ministry responsible for immigration and asylum to have a casting vote in the event of a tie. This decisive vote is perceived as detrimental to the child's best interest, as the ministry is by default biased towards returning unaccompanied children. Therefore, civil society suggests adding a selected transparently civil society representative to the committee<sup>32</sup> and removing the casting vote of the committee president in the event of a tie.<sup>33</sup>

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<sup>30</sup> UN Convention on the Rights of the Child Committee. Concluding observations on the combined fifth and sixth periodic reports of Luxembourg to the UN Convention on the Rights of the Child (CRC/C/LUX/CO/5-6) of 21 June 2021 paragraph 28 (e )

<sup>31</sup> [Règlement grand-ducal du 4 novembre 2020](#) relatif à la composition et au fonctionnement de la commission consultative d'évaluation de l'intérêt supérieur des mineurs non accompagnés prévue à l'article 103 de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration.

<sup>32</sup> Recommendations for 2021. For a Grand Duchy that guarantees the respect of fundamental rights related to asylum. (original in French : [Recommandations pour 2021. Pour un Grand-Duché garant du respect des droits fondamentaux en matière d'asile](#))

<sup>33</sup> Information provided by NGO Passarell on 5 January 2022.

### **3.2 Trade unions and human rights organisations join forces on the right to housing**

The Right to Housing coalition (original in Luxembourgish: [Wunnrecht](#)) is a new coalition that brings together trade unions and civil society organisations working on tenant rights, migrant and refugee rights, anti-racism, women's rights, anti-poverty and exclusion. Within the context of the Housing Action Day 2021 taking place throughout Europe, on 27 March 2021, the Wunnrecht coalition held a demonstration demanding access to dignified and affordable housing. The Wunnrecht coalition's main demand is to include the right to housing in the Constitution. Further requests include building affordable housing, enforcing rent ceilings, extending the moratorium on evictions until after the end of the COVID-19 pandemic, taxation of empty housing, progressive property taxation, ensuring claimants and beneficiaries of international protection access housing, and right to privacy in the context of flat sharing.

This coalition and event are noteworthy given the Luxembourg housing crisis, the novelty of demonstrations demanding housing rights in Luxembourg, and the fact that the Wunnrecht coalition is rights rather than service-delivery focused, which is uncommon in the Luxembourg civil society landscape, dominated by civil society organisations delivering public services for vulnerable populations.

### **3.3 Green Party online course on combating hate speech**

To counter online hate speech, the Luxembourg Green Party (original in Luxembourgish: Déi Gréng) launched a Luxembourgish-language free 90-minute online course on Combating (online) Hate Speech (original in Luxembourgish: [Hate Speech Bekämpfen](#)). The course is adapted from the Green European Foundation course available in several languages on the learning platform [Green Academy](#).